



Atty. Docket No. 69,010-335
Serial No. 10/696,530

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Pierson et al.

Serial No.: 10/696,530 Group Art Unit: 3712
Filed: 10/29/03 Examiner: Ackun
For: SMART SMOKE UNIT
Atty. Dkt. No.: 69,010-335

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**TERMINAL DISCLAIMER UNDER 37 C.F.R. 1.321(C) TO OBVIATE A
DOUBLE PATENTING REJECTION**

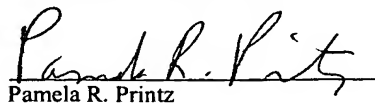
This paper is responsive to the Office Action mailed April 15, 2004 and the telephone conference of September 2, 2004 between the Applicants' undersigned attorney and the Examiner. Applicants made a bona fide attempt to respond to the outstanding Office Action by filing a Response and Terminal Disclaimer on July 15, 2004. Applicants were then informed that its Terminal Disclaimer was not accepted as a signature for that portion of the Response was omitted. Accordingly, in accordance with the instructions of the Examiner from our telephone conference, Applicants are re-filing the Response and Terminal Disclaimer under separate covers to correct the above-stated omission.

Because Applicants made a bona fide attempt to advance the prosecution of this matter in accordance with 37 CFR § 1.111(b) by filing its initial response and terminal disclaimer within three months of the issuance of the Office Action,

Certificate of First Class Mailing

I hereby certify that this Response to Office Action Pursuant to 37 C.F.R. 1.111 and Terminal Disclaimer under 37 C.F.R. 1.321(c) is being deposited with the United States Postal Service via regular First Class Mail delivery addressed to Mail Stop Amendment, P.O. Box 1450, Alexandria, Virginia 22313-1450, on this 8th day of September, 2004.

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Pamela R. Printz

Applicants do not believe this re-filed Response, which is being filed in lieu of the Examiner issuing a new Office Action, requires any fees. However, should the Office determine that any fees related to this matter, including extensions of time, are required, the Office is hereby authorized to charge any and all such fees to Deposit Account 04-2223.

I. STATEMENT OF OWNERSHIP

The undersigned certifies that Lionel L.L.C. of 26750 23 Mile Road, Chesterfield, Michigan 48051-1956, is the owner of the entire right, title and interest in the above-identified U.S. Patent Application Serial No. 10/696,530. The undersigned further certifies that Lionel L.L.C. is the owner of the entire right, title and interest in U.S. Patent No. 6,676,473.

II. DISCLAIMER

The undersigned, on behalf of Lionel L.L.C., owner of the entire right, title and interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior Patent 6,676,473. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. 1.321, has all claims canceled by a reexamination

certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

III. DECLARATION OF UNDERSIGNED UNDER 18 U.S.C. §1001

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

IV. FEE UNDER 37 C.F.R. §1.20(d)

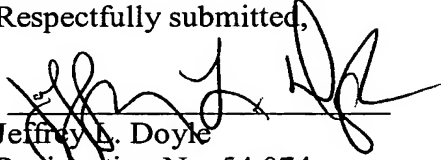
The Assistant Commissioner is hereby authorized to deduct the amount of \$110.00 from Deposit Account No. 04-2223 in payment of the fee presently due in connection with this Disclaimer under 37 C.F.R. §1.20(d), if such a fee is required in light of Applicants' statements set forth above regarding fees. The Assistant Commissioner is hereby further authorized to charge any deficiency or credit any overpayment to Deposit Account No. 04-2223.

V. CONCLUSION

If the Office has any further questions regarding this matter, please contact Applicant's undersigned attorney.

Date: September 7, 2004

Respectfully submitted,



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